

1. Disadvantaged Business Enterprise Program.

A Description

A.1 General

- (1) The disadvantaged business enterprise (DBE) requirements of 49 CFR part 26 apply to this contract. The department's DBE goal is shown on the cover of the bidding proposal. The contractor can meet the specified contract DBE goal by procuring services or materials from a DBE or by subcontracting work to a DBE. The department calculates the DBE participation as the dollar value of DBE participation bid expressed as a percentage of the total contract bid amount.
- (2) The department will select the lowest responsible bidder proposing to meet the DBE requirements under the contract as follows:
 1. The bidder documents that the DBE participation meets the contract DBE goal.
 2. The bidder documents that it made adequate good faith efforts to meet the contract DBE goal, even though it did not succeed in obtaining enough DBE participation to meet the DBE goal.
- (3) Under the contract, the contractor agrees to provide the assistance to and train participating DBE's to ensure the following:
 1. DBE quotations are accurate and complete.
 2. DBE understands highway plans applicable to their work.
 3. DBE understands specifications and contract requirements applicable to their work.
 4. DBE uses appropriate cost accounting and other business practices.
- (4) The department encourages the contractor to help train and develop minority business enterprises to become fully qualified contractors in the transportation construction field.
- (5) For information on the disadvantaged business program, visit the department's Civil Rights and Compliance Section website at:
<http://www.dot.wisconsin.gov/business/engrserv/dbe-main.htm>

A.2 Definitions

- (1) Interpret these terms, used throughout this special provision, as follows:

DBE: A disadvantaged business enterprise certified as a DBE by the department and included on the department's list of certified DBE's.

DBE goal: The amount of DBE participation in the contract shown on the cover of the bidding proposal.

Manufacturer: A firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract.

Supplier: A firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment required under the contract are bought, kept in stock, and regularly sold or leased to the public.

B Condition of Award

B.1 Bidder's Submission Requirements

- (1) Indicate the proposed percentage of DBE participation on the completed bidding proposal. For electronic submittals, show the percentage in the miscellaneous data folder under DBE. For paper submittals, show the percentage on the sheet included after the schedule of items. By submission of the bid, the bidder contractually commits to DBE participation at or above the bid percentage. If the bidder does not indicate the proposed percentage of DBE participation on the completed bidding proposal, proposals are irregular and the department will reject them.
- (2) Within 2 business days after the department publicly opens the bid, submit DBE commitment form DT2086 with attachment A. If the bid DBE commitment does not meet or exceed the DBE goal, also submit a good faith waiver request on department form DT2087 within the same 2 business days.
- (3) The department may declare the bid ineligible for award if the bidder fails to submit form DT2086 with attachment A or a good faith waiver request as specified in B.1(2), and may retain the bidder's proposal guaranty.

B.2 Department's DBE Evaluation Process

B.2.1 Bidder Meets DBE Percentage

- (1) If the bid indicates that the contract DBE goal is met, the department will evaluate form DT2086 with attachment A and notify the bidder in writing within 2 business days after receipt of form DT2086 with attachment A. The department will indicate one of the following:
 1. If the bidder's DBE commitment is verified, the bid is eligible for award.
 2. If the bidder's DBE commitment is not verified, the bidder has 2 business days to provide substitute DBE's.
 - 2.1 If substitutes are approved, the bid is eligible for award.
 - 2.2 If substitutes are not approved, the department may declare the bid ineligible for award and may retain the bidder's proposal guaranty. The department will provide a written explanation of why the substitute was rejected. The bidder has 2 business days to appeal the department's decision as allowed under B.5.

B.2.2 Bidder Does Not Meet DBE Percentage

- (1) If the bid indicates that the contract DBE goal is not met, the department will evaluate the bidder's commitment and consider the bidder's good faith waiver request.
- (2) The department will evaluate form DT2086 with attachment A and notify the bidder in writing within 2 business days after receipt of form DT2086 with attachment A. The department will indicate one of the following:
 1. The bidder's DBE commitment is verified as submitted.
 2. The bidder's DBE commitment is not verified. The bidder has 2 business days to provide substitute DBE's.
 - 2.1 If substitutes are approved, the bid commitment is approved.
 - 2.2 If substitutes are not approved, the department may declare the bid ineligible for award and may retain the bidder's proposal guaranty. The department will provide a written explanation of why the substitute was rejected. The bidder has 2 business days to appeal the department's decision as allowed under B.5.
- (3) The department will review the bidder's good faith waiver request and notify the bidder in writing within 3 business days after receipt of the good faith waiver request. The department will indicate one of the following:
 1. If the department grants a good faith waiver and reduces the contract goal, the bid is eligible for award.
 2. If the department rejects the good faith waiver request, the department may declare the bid ineligible for award and may retain the bidder's proposal guaranty. The department will provide a written explanation of why the good faith waiver request was rejected. The bidder has 2 business days to appeal the department's rejection as allowed under B.5.

B.3 Department's Criteria for DBE Participation

B.3.1 Department's DBE List

- (1) The department maintains a DBE list available upon request or on the department's website. The department will only approve firms, certified as a DBE by one of the unified certification program agencies, prior to the time set for opening the bid. If a firm certified at the time set for opening the bid is subsequently decertified before contract execution, the bidder must substitute a DBE with a certification valid at the time of contract execution.

B.3.2 Counting DBE Participation

B.3.2.1 General

B.3.2.1.1 Assessing DBE Work

- (1) The department only counts the value of the work a DBE actually performs towards the DBE goal. The department assesses the DBE work as follows:

1. The department counts work performed by the DBE's own resources. The department includes the cost of materials and supplies the DBE obtains for the work. The department also includes the cost of equipment the DBE leases for the work. The department will not include the cost of materials, supplies, or equipment the DBE purchases or leases from a non-DBE contractor, except the department will count non-project specific leases the DBE has in place before the work is advertised.
2. The department counts fees and commissions the DBE charges for providing a bona fide professional, technical, consultant, or managerial services. The department also counts fees and commissions the DBE charges for providing bonds or insurance. The department will only count costs the engineer deems reasonable based on experience or prevailing market rates.
3. If a DBE subcontracts work, the department counts the value of the subcontracted work only if the DBE's subcontractor is also a DBE.

B.3.2.1.2 Commercially Useful Function

- (1) The department counts expenditures of a DBE toward the DBE goal only if the DBE is performing a commercially useful function on that contract.
- (2) A DBE is performing a commercially useful function if the following conditions are met:
 1. For contract work, the DBE is responsible for executing a distinct portion of the contract work and it is carrying out its responsibilities by actually performing, managing, and supervising that work.
 2. For materials and supplies, the DBE is responsible for negotiating price, determining quality and quantity, ordering, and paying for those materials and supplies.
 3. For trucking, a DBE trucking firm manages and supervises trucking operations counted towards the DBE goal and owns at least one truck used on the contract.
- (3) A DBE is not performing a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

B.3.2.2 DBE Prime

- (1) If the prime contractor is a DBE, the department will only count the work the contractor performs with its own forces, the work DBE subcontractors perform, and the work DBE suppliers or manufacturers perform.

B.3.2.3 Joint Venture

- (1) If a DBE performs as a participant in a joint venture, the department will only count that portion of the total dollar value of the contract equal to portion of the work that the DBE performs with its own forces.

B.3.2.4 Trucking

- (1) The department counts expenditures to a DBE trucking firm toward DBE goal as follows:
 1. The department counts the total value of the transportation services DBE's provide on the contract using trucks a DBE owns, insures, and operates with drivers it employs. The department only counts the fees or commissions a DBE receives for trucks it leases from a non-DBE.
 2. For DBE trucking firms leasing trucks, leases must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease, if the lease gives the DBE absolute priority for using the leased truck. Leased trucks must display the name and identification number of the DBE trucking firm.

B.3.2.5 Manufacturers and Suppliers

- (1) The department counts material and supplies a DBE provides under the contract. The department will give full credit toward the DBE goal if the DBE is a manufacturer of those materials or supplies. The department will give 60 percent credit toward the DBE goal if the DBE is merely a supplier of those materials or supplies.

B.4 Department's Criteria for Good Faith Effort

- (1) The department will review a bidder request for a good faith waiver and potentially decrease the contract DBE goal if the bidder can document, on department form DT2087, that attainment of the contract DBE goal is not feasible. The bidder must demonstrate that they have aggressively solicited DBE participation, included available competitive quotes from DBE's in their bid, and have utilized available government, industry, and community programs in an attempt to meet the contract DBE goal.
- (2) The department will only decrease the contract DBE goal if the bidder has made the effort, given the relevant circumstances under the contract, that a bidder actively and aggressively seeking to meet the goal would make.
- (3) The department will evaluate the bidder's good faith effort and, based on that evaluation, may decrease the contract DBE goal. The department will consider bidder good faith efforts including but not limited to the following:

1. The bidder attended any pre-solicitation or pre-bid meetings the department held to inform DBE's of participation opportunities available on the project.
2. The bidder identifies selected specific economically feasible units of the work for potential DBE participation.
3. The bidder advertised the DBE opportunities available under the contract in general circulation, trade association, and minority and women oriented publications.
4. The bidder contacted in writing relevant DBE's, identified from the department's list of firms certified for the specific DBE opportunities available under the contract, in sufficient time to allow effective participation. The bidder also made follow-up contact by phone at least once per quarter with individual DBE's not responding in writing to the initial solicitation to determine their interest. Provide the following information on department form DT2087:
 - 4.1 The names, addresses, telephone numbers of DBE's contacted. The dates of both initial and follow-up contact.
 - 4.2 A description of information provided to the DBE's regarding the plans, specifications, and estimated quantities for portions of the work to be performed by that DBE.
 - 4.3 Photocopies of all written solicitations to DBE's.
 - 4.4 Documentation of each quote received by a DBE and if rejected, the reason for rejecting that quote.
5. The bidder assisted DBE's in obtaining bonding or insurance the department or the contractor requires.
6. The bidder negotiated in good faith and did not reject a DBE's bid without justifiable reason.
7. The bidder used the services of DBE community organizations, DBE contractor groups, local, state, and federal DBE business assistance offices and other organizations identified by the department's Civil Rights and Compliance Section.
8. The bidder has contacted the department's DBE Support Services Office before the letting either by phone or in writing to request assistance in meeting the DBE goal:

DBE Support Services Office
6150 Fond du Lac Ave.
Milwaukee, WI 53218
Phone: 414-438-4583
Fax: 414-438-5389

email: adetoye.adeniyi@dot.state.wi.us

B.5 Contractor's Appeal Process

- (1) A bidder can appeal the department's decision to declare the bid ineligible for award. Provide written documentation refuting the specific reasons for rejection stated in the department's rejection notice. The bidder may also request a hearing to present oral arguments. Failure to appeal within the 2 business days after receiving the department's written notice of rejection of either a substitute DBE under B.2.1(1) item 2.2 or B.2.2(2) item 2.2, or a good faith waiver request under B.2.2(3) item 2 constitutes a forfeit of the bidder's right of appeal.
- (2) The department will appoint a representative, who did not participate in the original determination, to assess the bidder's appeal. The department will issue a written decision within 2 business days after the bidder presents all written and oral testimony. In that written decision, the department will explain the basis for finding that the bidder did or did not meet the contract DBE goal or make an adequate good faith effort to meet the contract DBE goal. The department's decision is final.

C Reporting DBE Payments During Construction

- (1) Comply with reporting requirements specified in the department's civil rights & labor compliance management system manual.
- (2) Report payments to all DBE firms within 10 calendar days of receipt of a progress payment by the department or a contractor for work performed, materials furnished, or materials stockpiled by a DBE firm. The contractor shall report the payment as specified in C(1) for all work satisfactorily performed and for all materials furnished or stockpiled.
- (3) The contractor shall require the DBE firm in receipt of a progress payment by a contractor to acknowledge receipt of payment as specified in C(1) and (2).
- (4) All agreements made by a contractor shall include the provisions in C(1) and (2) and shall be binding on all contractors and subcontractors utilizing DBE firms on the project.

D Payment

- (1) Costs for conforming to this special provision and any associated DBE requirements are incidental to the contract.